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10 UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

11 UNITED STATES OF AMERICA,) Criminal Case No. 05-00009
12 Plaintiff,) GOVERNMENT'S PROPOSED JURY
13 v.) INSTRUCTIONS
14 JOSE CRUZ ALDAN,) Trial: Jury
a/k/a, "Joe,") Date: August 21, 2004
15 Defendant.) Time: 9:00 a.m.
16) Judge: Hon. Alex R. Munson
17)
18)

19 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its
20 counsel, Leonardo M. Rapadas, United States Attorney, and Timothy E. Moran, Assistant United
21 States Attorney, and hereby files its proposed jury instructions.

22 Dated: August 14, 2006

23 Respectfully submitted,
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25 LEONARDO M. RAPADAS
26

27 United States Attorney for the
28 Districts of Guam and NMI

By: TIMOTHY E. MORAN
Assistant United States Attorney

1 TABLE OF CONTENTS
2

2 NO.	2 DESCRIPTION	2 PAGE
3	Duties of Jury to Find Facts and Follow Law.....	1
4	Charge Against Defendant Not Evidence—Presumption of Innocence— Burden of Proof.....	2
5	A Defendant's Decision Not to Testify.....	3
6	A Defendant's Decision to Testify.....	4
7	Reasonable Doubt—Defined.....	5
8	What is Evidence.....	6
9	What is Not Evidence.....	7
10	Direct and Circumstantial Evidence.....	8
11	Credibility of Witnesses.....	9
12	Evidence of Other Acts of Defendant or Acts and Statements of Others.....	10
13	Knowingly—Defined.....	11
14	Statements by Defendant.....	12
15	Character of Defendant.....	13
16	Accomplice Witness Testimony.....	14
17	Charts and Summaries in Evidence.....	16
18	21 U.S.C. § 841(a)(1) – Distribution.....	17
19	Drug Quantity	18
20	Dates Mentioned in Indictment.....	19
21	Jury Consideration of Punishment.....	20
22	Duty to Deliberate.....	21
23	Consideration of Evidence	22
24	Use of Notes.....	23
25	Verdict Form.....	24
26	Communication With Court.....	25

INSTRUCTION

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done, any suggestion as to what verdict you should return—that is a matter entirely up to you.

[9th Cir. Crim. Jury Instr. 3.1 (2000)]

INSTRUCTION

The indictment is not evidence. The defendant has pleaded not guilty to the charges. A defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

[9th Cir. Crim. Jury Instr. 3.2 (2000)]

INSTRUCTION

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that a defendant did not testify

[9th Cir. Crim. Jury Instr. 3.3 (2000)]

1 INSTRUCTION ____
2 [if applicable]

3 Defendant [insert name(s)] has testified. You should treat this testimony just as you
4 would the testimony of any other witness.

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7 [9th Cir. Crim. Jury Instr. 3.4 (2000)]
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INSTRUCTION

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find the defendant guilty.

[9th Cir. Crim. Jury Instr. 3.5 (2000)]

INSTRUCTION

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

[9th Cir. Crim. Jury Instr. 3.6 (2000)]

INSTRUCTION

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

[9th Cir. Crim. Jury Instr. 3.7 (2000)]

INSTRUCTION

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence

[9th Cir. Crim. Jury Instr. 3.8 (2000)]

INSTRUCTION

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

[9th Cir. Crim. Jury Instr. 3.9 (2000)]

INSTRUCTION

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

[9th Cir. Crim. Jury Instr. 3.10 (2000)]

INSTRUCTION _____

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

[9th Cir. Crim. Jury Instr. 5.6 (Rev. 3/2002)]

INSTRUCTION

You have heard testimony that the defendants made statements. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

[9th Cir. Crim. Jury Instr. 4.1 (2000)]

INSTRUCTION

[if applicable]

You have heard evidence of the defendant's character for [e.g., truthfulness, peacefulness, honesty, etc.]. In deciding this case, you should consider that evidence together with and in the same manner as all the other evidence in the case.

[9th Cir. Crim. Jury Instr. 4.4 (2000)]

INSTRUCTION

You have heard testimony from [witness], a witness who [received immunity. That testimony was given in exchange for a promise by the government that [the witness will not be prosecuted] [the testimony will not be used in any case against the witness];

[received benefits] [compensation] [favored treatment] from the government in connection with this case];

[[admitted being] [was alleged to be] an accomplice to the crime charged. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime];

[pledged guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability].

For [this][these] reason[s], in evaluating [witness's] testimony, you should consider the extent to which or whether [witness's] testimony may have been influenced by [this] [any of these] factor[s]. In addition, you should examine [witness's] testimony with greater caution than that of other witnesses.

[9th Cir. Crim. Jury Instr. 4.9 (Rev. 9/2003)]

INSTRUCTION

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

[9th Cir. Crim. Jury Instr. 4.19 (2000)]

INSTRUCTION

The defendant is charged in Counts One and Two of the indictment with Distribution And Possession With Intent To Distribute A Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1). In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly delivered methamphetamine, in the form commonly known as “ice.”;

Second, the defendant knew that the substance was methamphetamine or some other prohibited drug.

It does not matter whether the defendant knew that the substance was methamphetamine. It is sufficient that the defendant knew that it was some kind of a prohibited drug.

[9th Cir. Crim. Jury Instr. 9.13, 9.15 (2000)]

INSTRUCTION _____

If you find the defendant guilty on any count of the Indictment, you must then determine the quantity of methamphetamine in the form commonly known as "ice." The term "ice" means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.

For each count of the Indictment on which you found the defendant guilty, place a mark next to the highest applicable drug quantity as indicated on the verdict form.

INSTRUCTION

Now, I want to say a word about the dates that have been mentioned in the indictment:

The indictment charges that the crimes occurred on approximately a certain date. The Government does not have to prove that the crimes happened on that exact date. But the Government must prove that the crimes occurred reasonably close to that date.

INSTRUCTION

The punishment provided by law for any crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against any defendant beyond a reasonable doubt.

[9th Cir. Crim. Jury Instr. 7.4 (2000)]

INSTRUCTION _____

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

[9th Cir. Crim. Jury Instr. 7.1 (2000)]

INSTRUCTION

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

[9th Cir. Crim. Jury Instr. 7.2 (2000)]

INSTRUCTION _____

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

[9th Cir. Crim. Jury Instr. 7.3(2000)]

INSTRUCTION _____

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the bailiff that you are ready to return to the courtroom.

[9th Cir. Crim. Jury Instr. 7.5 (2000)]

INSTRUCTION _____

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

12 || [9th Cir. Crim. Jury Instr. 7.6 (2000)]